SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

NO. 888 OCTOBER TERM, 1967

LOCALS 107, 312, 331, 384, 470, and 676, Affiliated With the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Petitioners,

v.

A. DUIE PYLE, INCORPORATED, A. E. F. TRANSPORTATION, INCORPORATED, AND NATIONAL LABOR RELATIONS BOARD, Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The Opinion and Judgment of the Court Below are printed in Appendix "A", pages 1a-11a of the Petition for Writ of Certiorari. The Decision and Order of the National Labor Relations Board (159 NLRB No. 1) are unreported and are printed in Appendix "B", pages 12a-54a of the Petition for Writ of Certiorari. The Petition for Certiorari does not include the entire stipulated record below but only an excerpt therefrom, entered into under Respondents' objection. Respondents include herein, as Appendix "A", of the Brief for Respondent in Opposition, the entire stipulated record.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition for Writ of Certiorari.

QUESTION PRESENTED

Whether Section 8(e) of the National Labor Relations Act proscribes an agreement between a labor union and common carriers by which those carriers must cease and refrain from doing business with independent contractors who own and/or operate their own vehicles (and which agreement requires that these independent contractors become Union members) despite the existence of other provisions in that agreement guaranteeing the economic and physical integrity of the collective bargaining unit and preserving the work of the employees in the unit.

STATUTE INVOLVED

The statutory provision involved is Section 8(e) of the National Labor Relations Act, as amended, 29 U.S.C. 158(e), and is printed in Appendix "C", page 55a of the Petition for Writ of Certiorari.

STATEMENT

In 1963, Local Teamster Unions Nos. 107, 312, 331, 384, 470 and 676 (hereinafter called the Union), all in the Philadelphia area, entered into a single collective bargaining agreement covering the multi-employer unit established under past agreements and comprised of the employees of 84 carriers engaged in local cartage and over-the-road trucking. The Respondents are carriers in that bargaining unit.

Some of the carriers within the multi-employer unit use their own equipment and employees exclusively; others use a mixture of their own and leased equipment; others rely heavily on leased equipment. The motor truck

carrier industry in the Delaware, New Jersey and Pennsylvania area always has contained a mixture of certificated carriers and owners of equipment available to lease. This leasing practice has existed for over 30 years. The practice has been one of the industry's classic methods of observing operational flexibility and business growth while at the same time exercising the greatest economy over capital investment in equipment and physical facilities.

Ownership of trucks, trailers and maintenance facilities is diffused among hundreds of persons. Some lessors are called "owner-operators" because they own and operate a single tractor-trailer which they may lease by the month or longer to a certificated carrier. Other lessors are called "fleet-operators" because they own more than one tractor-trailer which they lease to certificated carriers. The owner-operator occasionally may place a substitute driver on his equipment. The fleet-operator may drive one of his own vehicles and he employs other persons to drive his other vehicles. By stipulation of the parties, the only owner-operators or fleet-owners with which we are concerned in this proceeding are independent contractors; *i.e.* those owner-operators and fleet-owners as to whom the employer-employee relationship with the carrier does not apply, but as to whom the disputed provisions of the 1963 collective bargaining agreement would require such employer-employee relationship (Stipulation 18, Appendix "A", of the Brief for Respondent in Opposition, page 12a).

In the 1963 contract negotiations, the Union insisted upon the contested "owner-operator" language. The Union threatened a strike if the disputed language was not accepted. The carriers in the multi-employer bargaining unit capitulated *under protest,* maintaining that the disputed language was illegal. The parties agreed that the disputed provisions, although contained in the Agreement, would not be enforced until their legality was established.

A. Proceedings before the National Labor Relations Board

Upon execution of the Collective Bargaining Agreement containing the disputed provision, charges were filed June 3, 1963, on behalf of Respondents. On September 19, 1963, the Regional Director for the Fourth Region of the National Labor Relations Board, petitioned the United States District Court for the Eastern District of Pennsylvania for an Injunction under Section 10(1) of the National Labor Relations Act, alleging his reasonable cause to believe that the disputed language violated Section 8(e) of the Act as charged. An Order Granting Temporary Injunction was issued on December 9, 1963. Thereafter, the General Counsel issued his complaint and joined in an all-party stipulation of facts. A Trial Examiner's hearing was waived and all of the litigants' pleadings and briefs to the full National Labor Relations Board were on file by July 23, 1964. However, the Board did not issue its Decision and Order dismissing the complaint until June 10, 1966.

B. Proceedings in the Court Below

Upon Petition for Review, the Court of Appeals for the Third Circuit found that the disputed provision of the Agreement violated Section 8(e) of the National Labor Relations Act. The Board's approval of the provision requiring independent contractors to become bargaining unit employees was the only finding which Respondents challenged in the Third Circuit.

The Decision and Order of the Board dismissing the complaint was vacated and the case remanded to the Board for further action in accordance with the opinion of the Third Circuit.

REASONS FOR DENYING CERTIORARI

The main thrust of Petitioner's argument for granting certiorari is that the decision of the Third Circuit is in conflict with this Court's decisions in *Local 24, International Brotherhood of Teamsters v. Oliver*, 358 U.S. 283 and 362 U.S. 605. It is submitted that the court's decision below correctly interpreted *Oliver* and in no way conflicts with *Oliver*.

Article XXXII in *Oliver* is the provision which the Petitioner alleges allows a cessation of business and forces an owner-operator or fleet-owner to join the Teamsters. In *Oliver* this Court stated that no claim was made by any party that the Article in question violated any provision of federal law. Furthermore, Article XXXII applied to an individual owner-operated only when he was driving his own vehicle for a carrier (358 U.S. 286). The provision in issue applies not only to an owner-operator driving his own vehicle but also to a fleet-owner (who owns several vehicles, employs a number of drivers and leases his equipment and drivers, including himself, to the carrier). The only connection *Oliver* had to work preservation was the adverse effect on the negotiated wage scale of bargaining unit employees if the *rental* of the owner-operator's leased vehicle was not regulated. The object of Article XXXII was to protect the wage scale of the carrier's employees against possible undermining, through diminution of the owner-operator's compensation for driving, which might result from a *rental* arrangement which did not cover his operating costs. This Court decided that the thrust of Article XXXII was wages and not price fixing and, therefore within the ambit of mandatory collective bargaining (to preserve the economic integrity of the collective bargaining unit); and such mandatory collective bargaining could not be abridged by the State of Ohio's anti-trust statute. That this is all that was decided

in *Oliver* is confirmed by *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 212:

> "Conditions imposed upon contracting out work to prevent possible curtailment of businesses and the undermining of conditions of employment for members of the bargaining unit constituted a statutory subject of collective bargaining." [Citing *Oliver*].

The Petition for Writ of Certiorari states that *Fibreboard* is a continuation of *Oliver* (Petition for Certiorari, page 8). This is correct only to the extent that *Fibreboard* held that the question of whether an employer can replace his present employees in the bargaining unit with those of an independent contractor is a subject of mandatory collective bargaining. *Fibreboard* was never intended to reach a situation which the Petition for Writ of Certiorari claims it does. See also *National Woodwork Mfgrs. Assn. v. NLRB*, 386 U.S. 612, 642.

In the present case, both the economic and physical integrity of the bargaining unit are protected for the present and the future by specific contract provisions. The Master Agreement of 1963 contains a provision (Article 30(b) in the City Cartage Agreement and Article 33(b) in the Road Agreement) (Petition for Certiorari, 53a, 54a), with which Respondents take no issue:

> "For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that *no work or services presently performed or hereafter assigned to the collective bargaining unit* will be subcontracted, transferred, leased, assigned or conveyed in all or in part to any other plant, person, or non-unit employees, unless otherwise provided by this Agreement." (Emphasis added).

The Master Agreement also contains elaborate language and procedures concerning economic conditions and negotiated rental and wage rates for owner-operators and fleet-owners, none of which are questioned or disputed by Respondents. Despite this, Petitioner fears that unless certiorari is granted it "may well lead to grave industrial strife in the transportation industry . . ." (Petition for Certiorari, page 10). These fears are unfounded. It is *not* the number of members in the bargaining unit who are protected but the *work* which they perform. No matter how many employees are lost from the bargaining unit because of attrition, etc., the protective language will continue to apply to *work* and not to employees. Therefore, carrier employers will have to make new hires in order to conform to the measured amount of work which is performed by and guaranteed to the unit. Furthermore, the fact that Respondents raised no objections to negotiating wage rates and other conditions for owner-operators and fleet-owners makes it impossible for the bargaining unit employees to be endangered by the presence of independent contractors performing work and services which they have performed for these carriers for over 30 years. Unless it can be shown clearly that the presence of the independent contractor in some way harms the collective bargaining unit, he also has the right to be protected from involuntary loss of his entrepreneurial status.

The Petitioner states that *Meat and Highway Drivers, Local 710 v. NLRB (Wilson & Co.)* (D.C. Cir. 1964) 335 F.2d 709, 713, gives it the right to employ the tactics and seek the objectives which it did in this situation to acquire "fairly claimable work." The facts in *Wilson,* which lead to the dictum of "fairly claimable work" are distinguishable from the facts in the present case. Here the Petitioner is unable to show that its goal in forcing independent contractors to become employees

and Union members is primary, necessary for protection of the collective bargaining unit and the preservation of work which the employees in the unit perform. The Petitioner is unable to produce any evidence to show that the presence of independent contractors has in any way resulted in economic or physical decline in either bargaining unit work, strength or wage standards. Furthermore, as the Third Circuit noted, the Petitioner has *never* presented any evidence "to show that the valid and severable union standards provisions of the collective bargaining agreement were inadequate to safeguard the maintenance of union standards . . ." (Petition for Certiorari, page 10a).

This Court in *National Woodwork Mfgrs. Assn., supra* at 645 said:

> "The touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer *vis-a-vis* his own employees."

All of the standards which the Union needs to guarantee protection for the bargaining unit are present. There is an elaborate scheme of wages and rental arrangements for the owner-operator and fleet owner, which the Petitioner insisted upon and which the Respondents do not dispute. There is no economic advantage for carriers using independent contractors rather than their own employees. The limitations on subcontracting are so severe that "no work or services presently performed or hereafter assigned" to the bargaining unit can be performed by independent contractors. Loss of work by utilization of independent contractors is not foreseeable. On the contrary, Petitioner's bargaining unit representation has flourished and grown in spite of this utilization.

The provision the Respondents attacked in the court below does not relate to independent contractors observing Union standards, but to carriers doing business with independent contractors. The provision in issue does not

require a carrier to cease subcontracting, but to cease subcontracting to independent contractors who refuse to become carrier employees and members of the Union (Petition for Writ of Certiorari, pages 8a, 9a). (Petition for Certiorari, Appendix "B", 45a-53a).

The provision *in issue* is purely and simply a Union signatory clause and is banned under the Section 8(e) prohibition as stated in *Truck Drivers Union Local 413* v. *NLRB (Patton Warehouse)*, 334 F.2d 529 (D.C. Cir. 1964). The carriers can subcontract only with third parties who are unionized. Such a provision has repeatedly been struck down under Section 8(e) as having a secondary objective. *NLRB* v. *Joint Council of Teamsters No. 38*, 338 F.2d 23, 28, 30-31 (9th Cir. 1964); *Meat and Highway Drivers, Local 710, supra*, at 717; *District No. 9, International Brotherhood of Machinists* v. *NLRB*, 315 F.2d 33, 36-37 (D.C. Cir. 1967).

The Third Circuit's decision stated that the requirement that independent contractors must become carrier employees and members of the union constituted a reaching out for a "secondary objective" which is proscribed by Section 8(e) (Petition for Certiorari, page 10a). There never has been any consideration of state laws on union security in the history of this case. Only federal law has been considered and litigated. It is misleading for Petitioner to state that the Third Circuit's decision makes "the legality of the clauses under Section 8(e) turn upon the various state laws on Union security, . . ." (Petition for Certiorari, page 12). It is misleading for Petitioner to assert that these clauses have been successfully incorporated through collective bargaining. The disputed clauses were agreed to only under protest, in order to avert a strike. It was agreed by stipulation that their legality would be challenged and that they would not be effectuated until the rendering of a final judgment decree.

The decision of the Third Circuit reflects the body of federal labor law on the interpretation of Section 8(e); honors Congressional intent; conforms to national labor policies and statutory laws; recognizes the fact that the Petitioner's bargaining unit faces no threat of loss of work or danger to its economic or physical integrity; and is directly on point with *Oliver, Fibreboard,* and *National Woodwork.*

CONCLUSION

It is respectfully submitted that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

ROBERT H. KLEEB,
Counsel for Respondents

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH SESSION

HIGHWAY TRUCK DRIVERS AND HELPERS, LOCAL 107, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL 331, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; TRUCK DRIVERS, CHAUFFEURS AND HELPERS, LOCAL 384, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; GENERAL TEAMSTERS, CHAUFFEURS AND HELPERS, LOCAL 470, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; CHAUFFEURS TEAMSTERS AND HELPERS, LOCAL 312, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; TRUCK DRIVERS AND HELPERS, LOCAL 676, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and Case No. 4-CE-7

PETER D. WALTHER, An Individual

HIGHWAY TRUCK DRIVERS AND HELPERS, LOCAL 107, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL 312, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL 331, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; TRUCK DRIVERS, CHAUFFEURS, AND HELPERS, LOCAL 384, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; GENERAL TEAMSTERS, CHAUFFEURS, AND HELPERS, LOCAL 470, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; TRUCK DRIVERS AND HELPERS, LOCAL

676, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; DELAWARE COUNTY LABOR RELATIONS ASSOCIATION; DELAWARE VALLEY LABOR RELATIONS ASSOCIATION; SCHUYLKILL VALLEY LABOR RELATIONS ASSOCIATION; PRIVATE CARRIERS ASSOCIATION; LOCAL CARTAGE OPERATORS ASSOCIATION; SOUTH JERSEY TRANSPORT ASSOCIATION, INC.

and Case No. 4-CE-8

JOSEPH T. WENDLING, An Individual

LOCAL 107, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, INDEPENDENT

and Case No. 4-CC-267

S & E MCCORMICK, INC.

LOCAL 470, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, INDEPENDENT

and Case No. 4-CC-268

S & E MCCORMICK, INC.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the Respondent Unions, the Respondent Associations, the Charging Parties and Counsel for the General Counsel, by and through their respective counsel, that:

1. All parties hereto waive a hearing before a Trial Examiner, the making of findings of fact and conclusions of law by a Trial Examiner, and the issuance of a Trial Examiner's Decision.

2. This Stipulation, including the Exhibits, together with the Charges, Orders Consolidating Cases, Consoli-

dated Complaints and Notices of Hearing, Answers to Consolidated Complaints and Transcript of the abbreviated hearing held before Trial Examiner Reeves R. Hilton on November 26 and November 27, 1963, shall constitute the entire record herein and shall be filed with the Board.

3. All parties acknowledge timely receipt of the Charges, Orders Consolidating Cases, Consolidated Complaints and Notices of Hearing and Answers to Consolidated Complaints.

4. An "owner-operator" or an "owner-driver", which terms may be used interchangeably, is defined by the contract (Exhibits 1, a and b) and understood by all parties to be a person who owns either a truck-tractor or a truck-tractor and trailer and who leases the truck-tractor either with or without a truck-trailer to a carrier to be used for the transportation of various commodities by the Carrier under the authority of ICC or State Motor Authority, if any, and who then also drives and operates such equipment in the transportation of such commodities for the Carrier.

(a) Occasionally the owner-operator may provide a substitute driver to operate his equipment in the transportation of such commodities for the carriers.

5. A "fleet-owner" owns one or more truck-tractors, and leases such truck-tractors to one or more Carriers with or without drivers, for the purpose of transporting various commodities for the Carrier.

(a) The owner-operators and fleet-owners involved in these proceedings do not have permits, licenses, or certificates which authorize them to hold themselves out to the public as being in the transportation business in interstate commerce; accordingly, such fleet-owner and owner-operators may engage in transportation work in interstate commerce only for Carriers, or in the transportation of ICC exempt commodities.

6. The term "Carrier" means either a private, common or contract carrier as those terms are defined by the Interstate Commerce Act.

(a) Respondent Associations are comprised of eighty-four (84) member carriers engaged in the transportation of steel, heavy machinery, dry freight and household goods.

7. The Carriers named in Appendix A attached hereto were in a contractual or lease relationship with certain owner-operators, and the relationship of owner-operators to some of such Carriers under such contracts and leases, and in fact and in law, is that of independent contractor while the relationship of owner-operators to other of such Carriers, in fact and in law, is that of "employee" as defined in the Act.

(a) The contractual or lease relationship between the carriers named in Appendix A and owner-operators have been in existence for varying periods of time, from a minimum of two (2) years to a maximum of twenty-seven (27) years as set forth in Appendix A.

8. Some of the drivers of fleet-equipment which is leased to carriers with drivers, in the absence of the contractual provisions involved in these proceedings, are employees of the fleet-owner and some are employees of the carriers.

9. Counsel for the General Counsel, Delaware County Labor Relations Association, Delaware Valley Labor Relations Association, Schuylkill Valley Labor Relations Association, and Charging Parties aver that the Carriers named in Appendix A, with the exception of Carrier Cartage Co., Kulp and Gordon, Inc., Ragens Transportation Company, Robbins Motor Transportation and Salem Express, and the owner-operators and leased operators with whom they have lease agreements are in the relationship of independent contractors in fact and in law. Re-

spondent Unions, while agreeing that the relationship of owner-operators and fleet owner to some of the Carriers named in Appendix A is that of independent contractor, as to the relationship with specific Carriers, take the position this is a matter of proof under applicable laws.

10. The owner-operators involved in these proceedings are engaged in the transportation of steel, heavy machinery, dry freight and household goods. However, each of such owner-operators is not necessarily engaged in the transportation of each of such commodities.

11. The Carriers named in Appendix A also have their own employees driving carrier-owned equipment either in the transportation of steel, heavy machinery and dry freight or household goods, but each of such employees is not necessarily engaged in the transportation of each of such commodities.

12. The employees referred to above are represented for the purpose of collective bargaining by Respondent Unions under collective bargaining contracts negotiated with Respondent Employer Associations and their members. (Exhibits 1 a and b.)

13. (a) A number of the owner-operators, presently undetermined, who are in contractual or lease arrangement with the carrier named in Appendix A, are not members of any of the Respondent Unions.

(b) The contracts involved in this case and the work duties of employees under such contracts include the transportation of steel, heavy machinery, dry freight and household goods in intrastate and interstate commerce.

(c) The collective bargaining contracts between the parties hereto covering their employees for the term immediately prior to the effective date of the Agreements involved in these proceedings also included the transportation of steel, heavy machinery, dry freight, household goods, and contained, among other things, the contract

language attached hereto as Exhibit 2 (Article 1; Article 2, Section 3; Article 20; Article 21).

(d) Prior to the execution of the contracts involved in this case, none of the carrier-members of Respondent Associations were parties to any collective bargaining agreements with any of the Respondent Unions containing provisions pertaining to owner-operators similar to the owner-operator clauses involved in these proceedings, except as the Union avers may be contained in the attached agreements, Exhibits 3(a) to 3(c). Some of such carriers were parties to contracts containing the same or similar owner-operator clauses with other unions in other sections of the country where they are engaged in the trucking business, as follows:

Wilson Freight Forwarding Co., Kowalsky Express Service and Lobiondo Brothers Motor Express, Inc.

(e) Drivers who are qualified to drive equipment used in the transportation of dry freight and general commodities are also qualified to drive equipment used in the transportation of steel and heavy machinery and, if physically qualified, should be qualified to perform drivers' duties with respect to the latter after instruction as to the handling of the specific commodity.

(f) Some drivers of carriers may be assigned to the transportation of steel, heavy machinery or dry freight interchangeably.

14. The contract clauses involved in the instant case are similar to the contract clauses which have been negotiated by affiliates of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America in the various areas and cover the approximate number of Employers, Unions, and employees, indicated below.

(a) CENTRAL STATES OVER-THE-ROAD MOTOR FREIGHT AGREEMENT [Michigan, Ohio, Indiana, Illinois, Wisconsin,

Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas, Kentucky, West Virginia] 1,800 Employers; 95 Unions; 40,000 employees.

(b) SOUTHERN CONFERENCE OVER-THE-ROAD MOTOR FREIGHT AGREEMENT [Arkansas, Louisiana, Oklahoma and Texas] 150 Employers; 19 Unions; 10,000 employees.

(c) SOUTHEASTERN AREA OVER-THE-ROAD MOTOR FREIGHT AGREEMENT [Alabama, Florida, Georgia, Mississippi and Tennessee] 124 Employers; 13 Unions; 7,000 employees.

(d) WESTERN CONFERENCE OVER-THE-ROAD MASTER AGREEMENT [Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and El Paso, Texas] 1,662 Employers; 99 Unions; 38,000 employees.

(e) CAROLINA FREIGHT COUNCIL OVER-THE-ROAD AGREEMENT [North Carolina and South Carolina] 68 Employers; 5 Unions; 5,000 employees.

(f) VIRGINIA FREIGHT COUNCIL OVER-THE-ROAD AGREEMENT 60 Employers; 4 Unions; 1,700 employees.

(g) WESTERN PENNSYLVANIA MOTOR CARRIERS ASSOCIATION 75 Employers; 12 Unions; 1,750 employees.

(h) WEST VIRGINIA FREIGHT COUNCIL OVER-THE-ROAD AGREEMENT 29 Employers; 3 Unions; 825 employees.

(i) CENTRAL PENNSYLVANIA MOTOR CARRIERS OVER-THE-ROAD AGREEMENT 110 Employers; 5 Unions; 6,000 employees.

(j) MARYLAND—DISTRICT OF COLUMBIA FREIGHT COUNCIL OVER-THE-ROAD AGREEMENT 150 Employers; 4 Unions; 1,500 employees.

(k) NEW YORK STATE TEAMSTERS OVER-THE-ROAD AND LOCAL CARTAGE FREIGHT AGREEMENT 124 Employers; 12 Unions, 10,000 employees.

(l) BEDFORD, PENNSYLVANIA AREA LONG HAUL AGREEMENT 7 Employers; 1 Union; 650 employees.

(m) HARRISBURG, PENNSYLVANIA RELAY AGREEMENT 5 Employers; 1 Union; 265 employees.

(n) NEW ENGLAND FREIGHT AGREEMENT [Massachusetts, Connecticut, Rhode Island] 100 Employers; 16 Unions; 1,300 employees.

(o) MAINE FREIGHT AGREEMENT 12 Employers; 1 Union; 400 employees.

(p) NEW HAMPSHIRE GENERAL TRANSPORTATION AGREEMENT 22 Employers; 1 Union; 880 employees.

(q) VERMONT GENERAL TRANSPORTATION AGREEMENT 5 Employers; 1 Union; 200 employees.

(r) NEW JERSEY—NEW YORK GENERAL TRUCKING AGREEMENT 833 Employers; 12 Unions; 25,000 employees.

(s) M. T. L. R. ROAD AND CITY CARTAGE AGREEMENT [Philadelphia, Pennsylvania; Camden, New Jersey; Wilmington, Delaware] 254 Employers; 6 Unions; 10,000 employees.

(t) TRI-AREA LABOR ASSOCIATION AND INDEPENDENT ASSOCIATIONS ROAD AND CITY CARTAGE AGREEMENT [Philadelphia, Pennsylvania; Camden, New Jersey; Wilmington, Delaware] 84 Employers; 6 Unions; 2,000 employees.

(u) MANY LOCAL CARTAGE AGREEMENTS.

(v) Most Carriers operating in the areas covered by the above listed agreements operate under the contract clauses similar to those in the instant case; however, some smaller carriers do not.

15. A substantial number of Carriers and drivers, including owner-operators, covered by the above Agreements operate into and out of the area covered by the Agreements involved in this litigation, and a substantial number of Carriers and drivers, including owner-operators, covered by Agreements involved in this proceeding operate into some of the areas covered by the Agreements referred to above.

16. Respondent Unions subject to the objections reserved in paragraph 16 (A) below, would present the following testimony through witnesses as to the circumstances and object of the negotiations of the challenged clauses:

(a) The first such Agreement containing provisions relating to owner-operators appeared in the CENTRAL STATES AREA OVER-THE-ROAD MOTOR FREIGHT AGREEMENT for the period starting October 1, 1938 to October 31, 1939, and such provisions have appeared continuously in such Agreement, with amendments from time to time, down to the present time *(Local 24* v. *Revel Oliver,* 358 U.S. 283, hereinafter cited as *Oliver.)*

(b) The minimum lease contract rates which appear in Section 12 of Article 24 of Exhibit 1(b) resulted from surveys made by Unions and Carriers with regard to the cost of operation of leased equipment under other contracts in other areas and referred to in *Oliver.* Such rates have been increased from time to time to keep up with what the unions claim was the increased cost of operations and those rates were not intended to give to the owner-driver a profit for the use of his equipment. However, owner-drivers are free to negotiate lease rental rates which are in excess of the minimums established by the Agreement, and it is common for them to do so. *(Oliver)*

(c) Such minimum rental rates apply only to the equipment which an owner-driver leases to a Carrier and which the owner-driver drives himself in the transportation of commodities for such Carrier. *(Oliver)*

(d) Article 1, Section 2 and Article 23 of the collective bargaining agreement (Exhibit 1 a) before the Board in this case are essentially the same contract clauses which were before the United States Supreme Court in the case of *Local 24* v. *Revel Oliver,* 358 U. S. 283, and the statements contained in the Record and in the Opinion of the Court in that case accurately set forth the reasons, intent,

purposes and motive for the negotiation of such contract clauses by the Respondent Unions. *(Oliver)*

(e) The Union negotiated the Article to prevent undermining of the negotiated drivers' wage scale resulting from the practice of Carriers of leasing a vehicle from an owner-driver at a rental which returned to the owner-driver less than his actual costs of operation, so that the driver's wage received by him, although nominally the negotiated wage, was actually a wage reduced by the excess of his operating expenses over the rental he received. *(Oliver)*

(f) The Carriers and the Union have disputed since 1938 the terms of a Carrier's hire of a lessor's driving services with his leased vehicle. *(Oliver)*

(g) The usual lease is by the owner of a single vehicle who hires out his services as driver with his vehicle. *(Oliver)*

(h) The nub of the Union's position since 1938 has been that the Carriers abuse the leasing practice, particularly by paying inadequate rentals for the use of leased vehicles, with the result that part of the men's wages for driving was being used for the upkeep of their vehicles. . . . The Union's demands for contract provisions relating to owner-operators were designed also to secure a living wage for the lessor plus an adequate rental for his equipment. *(Oliver)*

(i) A minimum rental clause first appeared in the 1938 agreement which also contained provisions comparable to Sections 8, 10 and 14 of present Article 23, (Exhibit 1a). In 1939, after the Union claimed that "there were a lot of people that were transferring their title into other people's name to avoid the conditions of the contract", Section 3 was added to provide that "certificate and title to the equipment must be in the name of the actual owner." When the dispute brought the parties to

the verge of a strike in 1941, the note to Section 1 and Sections 13, 15, 16, 17 and 18 came into the agreement. *(Oliver)*

(j) In 1946 the Union demanded agreement from the Carriers to abolish the leasing practice claiming the Carriers were taking advantage of certain provisions of the contract. This demand was compromised by the addition of Section 19 restricting leasing to Carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state; the section represented the compromise between the union position that it should abolish all owner-operators and the Carriers' contention there should be no limitation. *(Oliver)* Section numbers referred to in subparagraphs (i) and (j) are the same section numbers which appear in Articles 23 and 24 in Exhibits 1(a) and 1(b) respectively.

(k) The Union also urged in support of its contract demands relating to Owner-operators that the inadequacy of a rental which means that the owner-operator makes up his excess costs from his driver's wages would result in the progressive curtailment of jobs through withdrawal of more and more Carrier-owned vehicles from service. *(Oliver)*

(l) The purpose and intent of the contract clauses in question is to preserve work covered by the contracts in evidence as Exhibits 1(a) and 1(b), to employees within the collective bargaining unit. (Article 1, Section 2; Article 23, Sections 1 and 4 of Exhibit 1(a); *Local 24* v. *Revel Oliver,* 358 U. S. 283 at 298).

(m) Drivers of fleet-owned equipment are also required to become employees of the Carrier under the provision of the Agreements. However, the lease rental rate which the Carrier pays to the fleet-owner for the use of his equipment is subject to negotiation between the

fleet-owner and the Carrier, and is not in any way regulated by the contract. *(Oliver)*

(n) The reason and object for requiring that all drivers of leased equipment including drivers of fleet-leased equipment become employees of the Carrier is the same as that relating to owner-operators, that is, to assure the payment of negotiated drivers' wages and to assure that work covered by the collective bargaining agreement be performed only by employees covered by the collective bargaining agreement. *(Oliver)*

(A) Counsel for the General Counsel, Respondent Associations and the Charging Parties object to the testimony referred to in paragraph 16(a) through (n), above, because it is irrelevant, immaterial or conclusionary in nature.

17. The demand for the inclusion of the articles which are involved in this proceeding arises out of a dispute between Respondent Unions and the Carriers, and the Unions would present testimony that it was not for the purpose of compelling owner-operators or the drivers of fleet equipment to join Respondent Unions, but acknowledges such would be the necessary result.

18. These proceedings involve only those owner-operators or fleetowners and fleet equipment drivers as to whom the Employer-employee relationship with the carrier does not apply, but as to whom the contract would establish such Employer-employee relationship.

19. Respondent Unions have entered into agreements substantially the same as those involved herein with Motor Transport Labor Relations, Inc., on behalf of the Carriers which Motor Transport Labor Relations, Inc., represents. By Agreement between the Respondent Unions, Motor Transport Labor Relations, Inc., and the Employer Associations involved in these proceedings, there has been created a single multi-employer unit covering the em-

ployees of all Local Cartage and Over-the-Road Operations of all Employers represented by such Employer Associations. The agreement with Motor Transport Labor Relations, Inc., and the recent certification of Respondent Unions as bargaining agents for Motor Transport Labor Relations, Inc., employees are attached hereto as Exhibits 4 and 5 respectively.

20. During the early stages of the negotiations of the collective bargaining contracts (Exhibits 1(a) and (b)), the Respondent Employers' Associations opposed the inclusion of the provisions involved in this proceeding and on February 12, 1963 charges were filed by A. Duie Pyle, Inc., A. E. F. Interstate Transportation Service, Moon Carrier and Cross Transportation Co., Cases Nos. 4-CC-237, 238, 239, 240, against some of Respondent Unions alleging violations of Sections 8(b)(4)(ii)(A) and (B) concerning the provisions involved in this proceeding. The charges were dismissed by the Regional Director for the Fourth Region on April 22, 1963 (Exhibit 6). During the negotiations the Respondent Employers' Associations offered to include in the agreement contractual guarantees that no employee drivers presently employed would be deprived of employment or work because of the utilization by any Carrier of owner-operators.

21. In the course of their operations, a few of the carriers named in Appendix A have used and do use owner-operators to perform certain over-the-road driving functions from specified origins to specified areas or destinations. Employees of those carriers have been used to perform such work only on those relatively few occasions when owner-operators were not available or when there was an overflow of such work.

The parties hereby request that the Board set a time for the filing of briefs. Within such period as may be granted by the Board, any party hereto may file with the Board in Washington, D. C., an original and six copies of a brief in support of their position and, immediately

upon such filing, shall serve a copy on each of the other parties. Upon special leave of the Board, any party may file a reply brief upon such terms as the Board may impose. Requests for such leave shall be in writing and a copy shall immediately be served on each of the other parties. Should any party desire permission to argue orally before the Board, the request therefor must be made in writing to the Board simultaneously with the filing of the aforementioned briefs, with proof of service on all other parties furnished with such request. The Board shall notify the parties of the time and place of oral argument if such permission is granted.

This Stipulation is made without prejudice to any objection that any party may have as to the materiality or relevancy of any facts or the competency of any conclusions stated herein.

It is further stipulated and agreed that if for any reason this Stipulation shall not be signed by all parties hereto, this Stipulation shall be null and void for all purposes and shall not be offered or received in evidence in any proceeding.

This Stipulation is entered into for the purpose of this proceeding only, and shall not be used in any other proceeding as an admission or admissions against any of the Respondents herein.

IN WITNESS HEREOF, the parties hereto have caused this Stipulation to be executed by the duly authorized representatives on the date set forth opposite their names.

LOCAL UNIONS 107, 312, 331, 384, 470 and 676, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

By

Date Executed:

DELAWARE COUNTY LABOR RELATIONS ASSOCIATION
DELAWARE VALLEY LABOR RELATIONS ASSOCIATION
SCHUYLKILL VALLEY LABOR RELATIONS ASSOCIATION

By

Date Executed:

PRIVATE CARRIERS ASSOCIATION
LOCAL CARTAGE OPERATORS ASSOCIATION
SOUTH JERSEY TRANSPORT ASSOCIATION, INC.

By

Date Executed:

S & E MCCORMICK, INC.

By

Date Executed:

PETER D. WALTHER

By

Date Executed:

JOSEPH T. WENDLING

By

Date Executed:

GENERAL COUNSEL OF THE NATIONAL LABOR RELATIONS BOARD

By

Counsel for the General Counsel
National Labor Relations Board
Fourth Region

Date Executed: